

MORTGAGE RECOVERY LAW GROUP, LLP

PAUL A. LEVIN (State Bar No. 229077)

LAUREN M. GIBBS (State Bar No. 251569)

550 North Brand Boulevard, Suite 1100

Glendale, California 91203

Telephone: (818) 630-7900 Facsimile: (818) 630-7920

e-mail: plevin@themrlg.com, lgibbs@themrlg.com

FEDERAL DEPOSIT INSURANCE CORPORATION

DOUGLAS T. HOFFMAN (to seek admission pro hac vice)

3501 Fairfax Avenue, Room B-7052

Arlington, VA 22226

Telephone: (703) 516-5383

e-mail: dohoffman@fdic.gov

Attorneys for Plaintiff Federal Deposit
Insurance Corporation as Receiver
for Washington Mutual Bank

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK.

Case No.

COMPLAINT FOR CONTRACTUAL INDEMNITY

Plaintiff,

vs.

GUILD MORTGAGE COMPANY
LLC, a California limited liability
company,

Defendant..

INTRODUCTION

1 1. Pursuant to written agreements, defendant Guild Mortgage Company
2 LLC (“Guild” or “Defendant”) brokered mortgage loans for Washington Mutual
3 Bank and/or its subsidiaries, including Long Beach Mortgage Company
4 (collectively, “WaMu”). As part of their agreements, Guild promised to indemnify
5 WaMu for any losses arising either directly or indirectly, or in any way as a result of
6 an inaccurate or incomplete application or other documentation for loans brokered
7 by Guild.

8 2. After WaMu funded the loans from Guild, WaMu sold Guild-brokered
9 loans into residential mortgage-backed securitized trusts (“RMBS Trusts”) for
10 which Deutsche Bank National Trust Company served as trustee (“Trustee”). The
11 Trustee ultimately asserted claims that it suffered losses because of defective loans
12 sold into the RMBS Trusts, including at least 14 mortgage loans brokered by Guild
13 (“Guild Defective Loans”).

14 3. Plaintiff Federal Deposit Insurance Corporation as Receiver for WaMu
15 (“FDIC-R” or “Plaintiff”) incurred losses settling the Trustee’s claims. FDIC-R’s
16 losses resulted from inaccurate or incomplete loan applications or other
17 documentation prepared by or at the direction of Guild including, *inter alia*, Guild’s
18 submission of loan applications and supporting material that misrepresented such
19 things as the borrowers’ credit histories, employment status, income, or occupancy
20 status.

21 4. FDIC-R demanded that Guild honor its written contractual
22 indemnification obligation. Because Guild has not honored its obligations, FDIC-R
23 brings this action as successor to WaMu’s rights, titles, powers, and privileges.
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PARTIES, JURISDICTION, AND VENUE

5. The Federal Deposit Insurance Corporation is an instrumentality of the
 3 United States and is organized and exists under the laws of the United States. 12
 4 U.S.C. §§ 1811, 1821(d). Pursuant to 12 U.S.C. § 1821(d)(2), FDIC-R succeeded to
 5 all rights, titles, powers, and privileges of WaMu and of any stockholder, member,
 6 account holder, depositor, officer, or director of WaMu with respect to the bank and
 7 its assets. FDIC-R brings this action in its capacity as the duly appointed receiver of
 8 WaMu, which the Office of Thrift Supervision closed on September 25, 2008,
 9 appointing FDIC as Receiver for WaMu that same day.

10. 6. Guild is a California limited liability company with its principal place
 11 of business in San Diego, California, and is registered and licensed to do business in
 12 California.

13. 7. This Court has subject-matter jurisdiction pursuant to 12 U.S.C.
 14 § 1819(b)(1) and (2) and 28 U.S.C. §§ 1331 and 1345.

15. 8. Guild contractually agreed to venue in this district. *See Broker*
 16 *Agreement (“Agreement”), ¶21, attached hereto as Exhibit 1.* Venue is also proper
 17 in this district pursuant to 28 U.S.C § 1391 because a substantial part of the events
 18 or omissions giving rise to this claim occurred in this judicial district because,
 19 among other things, the contractual business relationship was entered into by WaMu
 20 in this district and the place of performance for all or some of the obligations sued
 21 upon was in this district. Venue is also proper in this district because Guild resides
 22 in this district in that it is subject to the court’s personal jurisdiction with respect to
 23 the action at issue.

FACTUAL ALLEGATIONS

25. 9. WaMu was a federal savings bank that, directly or through affiliates
 26 and/or subsidiaries, among other things, purchased, funded, and sold mortgage loans
 27 to investment trusts that packaged loans into securities for investors, which are
 28 generally known as residential mortgage-backed securities.

1 10. On information and belief, Guild engaged in the business of brokering,
2 originating, processing, packaging, submitting for funding, selling and/or
3 transferring loans secured by real property.

4 **A. Guild's Contractual Obligations**

5 11. Guild and WaMu had a contractual business relationship, governed by
6 one or more mortgage broker agreements including the Broker Agreement
7 (“Agreement”) attached hereto as Exhibit 1.

8 12. Under the Agreement, Guild agreed to “prepare and complete
9 applications for loans to be secured by mortgages which shall meet all applicable
10 requirements established by [WaMu] at its sole and absolute discretion.” Guild
11 further agreed it would “obtain factual data, at its own expense, relating to the loan
12 application, necessary to the proper and accurate completion of such application[.]”

13 13. Guild was compensated for any loans funded by WaMu.

14 14. Pursuant to the Agreement, Guild expressly agreed to indemnify
15 WaMu as follows:

16 [Guild] will indemnify, defend and hold [WaMu] ... harmless from any
17 and all costs, claims, charges, actions, causes of action, losses or
18 liability arising either directly or indirectly, regardless of any
19 indemnitee's negligence, by reason of [Guild]'s negligence, a breach of
20 the terms or conditions of this Agreement, or in any way as a result of
an inaccurate or incomplete application or other documentation
prepared by or at the direction of [Guild].

21 **B. The Guild Defective Loans**

22 15. As noted above and set forth in more detail below, the Trustee asserted
23 claims against the FDIC-R based on WaMu's sale of defective loans into the RMBS
24 Trusts, including the Guild Defective Loans. As a result, FDIC-R incurred losses in
25 connection with the Guild Defective Loans.

26 16. Pursuant to the Agreement, Guild brokered the 14 Guild Defective
27 Loans summarized on Exhibit 2 attached hereto.

1 17. The Guild Defective Loans failed to meet “all applicable requirements”
2 and “terms or conditions of [the] Agreement”, and contained inaccurate and
3 incomplete applications or other documentation, because of misrepresentations in
4 the application materials, including but not limited to misrepresentations relating to
5 the quality and characteristics of the loans, the borrowers, and the collateral.

6 18. As an example, the loan documents for borrower TA contained
7 numerous deficiencies, inaccuracies, and material misrepresentations. Guild
8 prepared and submitted loan application documents for TA utilizing a false social
9 security number. In addition, the verification of rent was an ineligible source of
10 credit history as it was signed by an undisclosed relative of TA instead of an
11 independent third party as specifically required by WaMu.

12 19. As another example, Guild prepared and submitted loan application
13 documents representing that VM would purchase the property with the co-borrower,
14 a family member, and that VM would also occupy the property. Such
15 representations in the loan documents were inaccurate. VM was a straw borrower as
16 VM’s credit was provided solely so that VM’s family member could purchase the
17 property. In addition, VM did not occupy the property.

18 **C. WaMu Sale of the Guild Defective Loans to the RMBS Trusts**

19 20. After WaMu funded the Guild Defective Loans, WaMu sold each of
20 them to the RMBS Trusts.

21 21. In connection with such sales, and in reliance on the materials,
22 representations, obligations, and remedies Guild provided, WaMu provided similar
23 representations, obligations, and remedies to the RMBS Trusts as those made by
24 Guild regarding the quality and characteristics of the loans, the borrowers, and the
25 collateral.

26 22. The RMBS Trusts suffered losses resulting from defective loans that
27 WaMu sold to the RMBS Trusts, including the Guild Defective Loans.

1 **D. FDIC-R's Settlement with Trustee**

2 23. On December 30, 2008, Trustee filed a proof of claim with FDIC-R
3 asserting that WaMu sold the RMBS Trusts defective loans. On August 26, 2009,
4 Trustee filed a lawsuit in the District Court for the District of Columbia against
5 FDIC-R for losses resulting from defective loans that WaMu sold to the RMBS
6 Trusts, including the Guild Defective Loans.

7 24. FDIC-R was liable for the losses due to breaches of WaMu's
8 representations and obligations concerning the quality and characteristics of the
9 loans, the borrowers, and the collateral on certain loans sold into the RMBS Trusts,
10 which loans included the Guild Defective Loans. Given Guild's role and conduct in
11 connection with the Guild Defective Loans, including Guild's relationship to the
12 borrowers and that the loan information, documentation, and application packages
13 were prepared, gathered, and submitted by Guild, FDIC-R's liability exposure to the
14 Trustee arose out of inaccurate or incomplete loan applications or other documents
15 prepared by or at the direction of Guild.

16 25. FDIC-R defended itself against the claims in the Trustee's lawsuit and
17 eventually settled with the Trustee.

18 26. On June 30, 2017, the Superior Court of the State of California
19 approved Trustee's application to accept a settlement of its claims against the
20 FDIC-R for the FDIC-R's payment of more than \$3 billion, including claims arising
21 out of or relating to the Guild Defective Loans. Settlement of the Trustee's claims
22 for that court-approved amount was objectively reasonable. On September 8, 2017,
23 FDIC-R issued a \$3,006,929,660 Receivership Certificate in settlement of Trustee's
24 claims, thereby suffering a loss under the Agreement indemnification provision.
25 FDIC-R's claims are timely because they are brought within six years of the date
26 FDIC-R suffered a loss. 12 U.S.C. § 1821(d)(14).

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E. Guild's Breach of the Indemnification Obligation

2 27. On June 23, 2021, FDIC-R sent a demand letter to Guild seeking
3 indemnification for its losses arising out of Guild's acts and omissions in connection
4 with the Guild Defective Loans. Guild has not honored its obligation to indemnify
5 under the Agreement.

6 28. The Agreement provides that the prevailing party in any action to
7 enforce it may recover its reasonable attorneys' fees. In order to enforce Guild's
8 obligations under the Agreement, FDIC-R has retained the firm of Mortgage
9 Recovery Law Group, LLP and agreed to pay it reasonable attorneys' fees. In
10 addition, FDIC-R has assigned in-house counsel to assist in actively preparing to
11 bring this case to trial.

12 29. All conditions precedent to the relief sought in this action have been
13 fulfilled.

CLAIM FOR RELIEF

(Contractual Indemnification)

16 30. Plaintiff FDIC-R incorporates by reference the allegations set forth
17 above as though set forth fully herein.

18 || 31. The Agreement is a valid and enforceable contract.

19 32. Plaintiff substantially performed all its obligations under the
20 Agreement.

21 33. In connection with settlement of the claims involving the Guild
22 Defective Loans, FDIC-R incurred substantial losses and damages resulting from
23 inaccurate or incomplete applications or other documentation for loans brokered by
24 Guild.

25 34. FDIC-R is entitled to indemnification from Guild for the losses
26 FDIC-R suffered settling the Trustee's claims.

27 35. Guild breached its obligation to indemnify FDIC-R, resulting in
28 damage to FDIC-R in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FDIC-R respectfully requests that it be granted:

- A. A judgment against Guild in an amount to be proven at trial for its breach of its indemnification obligation;
 - B. Pre-judgment interest under 12 U.S.C. § 1821(l) or applicable state law;
 - C. Reasonable attorneys' fees;
 - D. Costs and expenses; and
 - E. Any other relief as the Court deems just and proper.

DATED: October 6, 2022

MORTGAGE RECOVERY LAW GROUP, LLP

By: /s/ Paul A. Levin

Paul A. Levin

Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank

DATED: October 6, 2022

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ Douglas T. Hoffman

Douglas T. Hoffman (to seek admission to pro hac vice)
Attorneys for Plaintiff Federal Deposit Insurance
Corporation as Receiver for Washington Mutual Bank